

LABOR SERVICES DIVISION[875]

Notice of Intended Action

**Proposing rule making related to division organization and statutory and technical changes
and providing an opportunity for public comment**

The Labor Commissioner hereby proposes to amend Chapter 1, “Description of Organization and Procedures Before the Division,” to rescind Chapter 2, “IOSH Enforcement, IOSH Research and Statistics, IOSH Consultation and Education,” and to amend Chapter 4, “Recording and Reporting Occupational Injuries and Illnesses,” Chapter 8, “Consultative Services,” Chapter 32, “Child Labor,” Chapter 35, “Wage Payment Collection,” Chapter 38, “Employment Agency Licensing,” Chapter 155, “Asbestos Removal and Encapsulation,” and Chapter 156, “Bidder Preferences in Government Contracting,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 73A.21, 88.5, 88B.3, 91A.9, 92.21 and 94A.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A, 22, 73A, 88, 88B, 91A, 92 and 94A.

Purpose and Summary

The proposed amendments would update rules to reflect statutory changes, new phone numbers, a new office location, reorganization of the division, and revision of forms; rescind unnecessary rules; and amend the existing requirement for advance notice of an asbestos abatement project.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 1 or 5.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on July 16, 2019. Comments should be directed to:

Kathleen Uehling
Labor Services Division
150 Des Moines Street
Des Moines, Iowa 50319

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

July 16, 2019
9 a.m.

150 Des Moines Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Division and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Rescind rule 875—1.3(91) and adopt the following **new** rule in lieu thereof:

875—1.3(91) Description of the division. General authority for the division is set forth in Iowa Code chapter 91. The labor commissioner is the executive head of the division and is appointed by the governor and confirmed by the senate. The division also includes employees under the supervision of the commissioner, the elevator safety board, and the boiler and pressure vessel board.

1.3(1) The function of the division is to administer and enforce the following:

- a. Bidder preference in government construction contracts as set forth in Iowa Code section 73A.21;
- b. Collection of payments owed to the workers' compensation second injury fund as set forth in Iowa Code section 85.68;
- c. The occupational safety and health program as set forth in Iowa Code chapter 88;
- d. The amusement ride safety program as set forth in Iowa Code chapter 88A;
- e. The asbestos removal and encapsulation program as set forth in Iowa Code chapter 88B;
- f. The boiler and unfired steam pressure vessel program as set forth in Iowa Code chapter 89;
- g. The conveyance safety program as set forth in Iowa Code chapter 89A;
- h. The hazardous chemicals risks right to know program as set forth in Iowa Code chapter 89B;
- i. The boxing, mixed martial arts, and wrestling program as set forth in Iowa Code chapter 90A;
- j. The wage payment collection program as set forth in Iowa Code chapter 91A;
- k. The construction contractor registration and bonding program as set forth in Iowa Code chapter 91C;
- l. The minimum wage program as set forth in Iowa Code chapter 91D;
- m. The employment of non-English speaking employees program as set forth in Iowa Code chapter 91E;
- n. The child labor program as set forth in Iowa Code chapter 92; and
- o. The employment agency licensing program as set forth in Iowa Code chapter 94A.

1.3(2) Correspondence and payments may be mailed to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The telephone number for the division is (515)242-5870. The division's office is located at 150 Des Moines Street, Des Moines, Iowa. The division's website is www.iowadivisionoflabor.gov.

ITEM 2. Rescind subrule 1.12(1) and adopt the following **new** subrule in lieu thereof:

1.12(1) Filing a request. A request for access to a record may be sent to the division at 1000 East Grand Avenue, Des Moines, Iowa 50319, or open.records@iwd.iowa.gov. A request for access may be sent via facsimile to (515)281-7995 or may be delivered to the division's office at 150 Des Moines Street, Des Moines, Iowa. If a request for access to a record is misdirected, division personnel will promptly forward the request to the appropriate person within the division.

ITEM 3. Amend paragraphs **1.18(2)“h”** to **“j”** as follows:

h. Records or portions of records containing attorney work product or attorney-client communications, or which are otherwise privileged pursuant to Iowa Code sections 22.7(4), 622.10, and 622.11, ~~Iowa R.C.P. 122(e), Fed. R. Civ. P. 26(b)(3), rules of; rules of civil procedure, evidence, and professional responsibility for attorneys; and case law, and the Code of Professional Responsibility.~~

i. Minutes of closed meetings of a government body pursuant to Iowa Code section ~~21.5(4)~~ 21.5.

j. Information protected by ~~42 U.S.C. 11044(a) or~~ by Iowa Code sections 89B.12, ~~and~~ 89B.13, ~~and~~ 91.12.

ITEM 4. Rescind and reserve paragraph **1.18(2)“l.”**

ITEM 5. Rescind rule 875—1.21(22,91) and adopt the following **new** rule in lieu thereof:

875—1.21(22,91) Notice to suppliers of information. The division shall notify persons completing agency forms of the use that will be made of personal information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means. Notice need not be given in connection with discovery requests in litigation or administrative proceedings, subpoenas, investigations of possible violations of law, or similar demands for information.

ITEM 6. Rescind and reserve subrule **1.23(1)**.

ITEM 7. Amend subrule 1.23(16) as follows:

1.23(16) Personally identifiable information concerning ~~private~~ employment agency licensees is collected pursuant to Iowa Code chapter ~~95~~ 94A. The information includes biographical data and information about the ~~private~~ employment agency ~~licensee~~ licensee.

ITEM 8. Amend paragraph **1.35(3)“a”** as follows:

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) *“b”* as ~~amended by 1998 Iowa Acts, chapter 1202, section 8,~~ or this chapter.

ITEM 9. Amend subrule 1.35(5) as follows:

1.35(5) Accessibility. The division will schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the division's rules coordinator at ~~(515)281-3445~~ in advance to arrange access or other needed services.

ITEM 10. Amend subrule 1.36(1) as follows:

1.36(1) Definition of small business. A “small business” is defined in ~~1998 Iowa Acts, chapter 1202, section 10(7)~~ Iowa Code section 17A.4A(8).

ITEM 11. Rescind and reserve subrules **1.36(2)** and **1.36(3)**.

ITEM 12. Amend subrule 1.36(4), introductory paragraph, as follows:

1.36(4) Qualified requesters for regulatory analysis—economic impact. The division will issue a regulatory analysis of a proposed rule that conforms to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(2a)~~ Iowa Code section 17A.4A, after a proper request from:

ITEM 13. Amend subrule 1.36(5), introductory paragraph, as follows:

1.36(5) *Qualified requesters for regulatory analysis—business impact.* The division will issue a regulatory analysis of a proposed rule that conforms to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(2b)~~ Iowa Code section 17A.4A, after a proper request from:

ITEM 14. Amend subrules 1.36(6) to 1.36(11) as follows:

1.36(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the division will adhere to the time lines described in ~~1998 Iowa Acts, chapter 1202, section 10(4)~~ Iowa Code section 17A.4A.

1.36(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the division. The request shall be in writing and satisfy the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(1)~~ Iowa Code section 17A.4A.

1.36(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(4,5)~~ Iowa Code section 17A.4A.

1.36(9) *Publication of a concise summary.* The division will make available, to the maximum extent feasible, copies of the published summary in conformance with ~~1998 Iowa Acts, chapter 1202, section 10(5)~~ Iowa Code section 17A.4A.

1.36(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis will conform to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(2a)~~ Iowa Code section 17A.4A, unless a written request expressly waives one or more of the items listed in the section.

1.36(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(2b)~~ Iowa Code section 17A.4A.

ITEM 15. Rescind subrule 1.37(1) and adopt the following **new** subrule in lieu thereof:

1.37(1) The division will prepare and submit a fiscal impact statement to satisfy the requirements of Iowa Code section 17A.4(4) and section 25B.6 if a notice of intended action or a rule filed without notice necessitates new annual expenditures of at least \$100,000 or combined expenditures of at least \$500,000 within five years by all affected persons.

ITEM 16. Rescind rule 875—1.40(17A) and adopt the following **new** rule in lieu thereof:

875—1.40(17A) Exemptions from public rule-making procedures.

1.40(1) *Omission of notice and comment.* Pursuant to Iowa Code section 17A.4(3) “a,” the division may adopt a rule without publishing advance notice of intended action in the Iowa Administrative Bulletin and without providing for public comment when the statute so provides or if the administrative rules review committee approves.

1.40(2) *Providing for notice and comment for a rule adopted without notice and comment.* The commissioner may begin a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule adopted without notice and comment. After notice under this subrule, the commissioner may take any lawful action, including amendment, adoption, or repeal of the rule.

ITEM 17. Amend paragraph **1.42(1)“b”** as follows:

b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by ~~1998 Iowa Acts, chapter 1202, section 8,~~ Iowa Code section 17A.4(2) or the division in its discretion decides to include the reasons;

ITEM 18. Amend paragraph **1.42(1)“f”** as follows:

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided

in the rule if such reasons are required by ~~1998 Iowa Acts, chapter 1202, section 8,~~ Iowa Code section 17A.4(2) or the division in its discretion decides to include such reasons; and

ITEM 19. Amend subrule 1.43(4) as follows:

~~1.43(4) Significant-written~~ *Written criticisms*. Written criticisms of a rule may be ~~submitted to the division and directed mailed to the~~ Division of Labor Services, Division Rules Coordinator, 1000 East Grand Avenue, Des Moines, Iowa 50319. ~~A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike regarding the rule.~~ To constitute a criticism of a rule, the criticism must be in writing, state it is a criticism of a specific rule, state the rule number, and provide reasons for criticism of the rule. All written rule criticisms received will be kept ~~in a separate record~~ for a period of five years.

ITEM 20. Amend subrule 1.52(3), introductory paragraph, as follows:

1.52(3) A petition for intervention shall be ~~filed at the~~ mailed to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be ~~typewritten or legibly handwritten in ink~~ legible and must substantially conform to the following form:

ITEM 21. Amend rule 875—1.54(17A) as follows:

875—1.54(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be ~~made mailed to the Declaratory Orders Coordinator,~~ Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

ITEM 22. Amend subrule 1.57(1) as follows:

1.57(1) Within the time allowed by ~~1998 Iowa Acts, chapter 1202, section 13(5)~~ Iowa Code section 17A.9, after receipt of a petition for a declaratory order, the labor commissioner or designee shall take action on the petition as required by ~~1998 Iowa Acts, chapter 1202, section 13(5)~~ Iowa Code section 17A.9.

ITEM 23. Amend subrule 1.58(1), introductory paragraph, as follows:

1.58(1) The division shall not issue a declaratory order where prohibited by ~~1998 Iowa Acts, chapter 1202, section 13(1),~~ Iowa Code section 17A.9 and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

ITEM 24. Amend rule ~~875—1.66(17A)~~, definition of “Contested case,” as follows:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes a ~~no factual dispute~~ contested case under 1998 Iowa Acts, chapter 1202, section 14 ~~without a factual dispute~~ pursuant to Iowa Code section 17A.10A.

ITEM 25. Amend paragraph **1.69(2)“j”** as follows:

j. Notification of the time period in which a party may request, pursuant to ~~1998 Iowa Acts, chapter 1202, section 15(1),~~ Iowa Code section 17A.11 and rule ~~875—1.70(17A)~~, that the presiding officer be an administrative law judge.

ITEM 26. Amend subrule 1.72(2) as follows:

1.72(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other division functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by ~~1998 Iowa Acts, chapter 1202, section 19(3),~~ Iowa Code section 17A.17 and subrules 1.72(3) and 1.86(9).

ITEM 27. Amend subrule 1.72(4) as follows:

1.72(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 1.72(1), the party shall file a motion supported by an affidavit pursuant to ~~1998 Iowa Acts, chapter 1202, section 19(7)~~ Iowa Code section 17A.17. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule ~~875—1.88(17A)~~ and seek a stay under rule ~~875—1.93(17A)~~.

ITEM 28. Amend subrule 1.75(4) as follows:

1.75(4) When filing is required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be ~~filed with~~ mailed to the division at 1000 East Grand Avenue, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the division.

ITEM 29. Amend subrule 1.93(2) as follows:

1.93(2) *When granted.* In determining whether to grant a stay, the presiding officer or the commissioner shall consider the factors listed in ~~1998 Iowa Acts, chapter 1202, section 23(5c)~~ Iowa Code section 17A.19.

ITEM 30. Amend subrule 1.95(1), introductory paragraph, as follows:

1.95(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the division may issue a written order in compliance with ~~1998 Iowa Acts, chapter 1202, section 21,~~ Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the division by emergency adjudicative order. Before issuing an emergency adjudicative order the division shall consider factors including, but not limited to, the following:

ITEM 31. Amend subrule 1.101(1) as follows:

1.101(1) These rules provide general procedures for waivers and variances from division rules. Specific waiver or variance procedures must be followed when applicable. ~~No~~ Except where specific statutory authority is granted, no waiver or variance may be granted from a requirement or duty imposed by statute or when granting a waiver or variance would cause a denial of federal funds or be inconsistent with federal statute or regulation. Any waiver or variance must be consistent with statute. These waiver and variance procedures do not apply to rules that merely define the meaning of a statute or other provision of law unless the division possesses delegated authority to bind the courts with its rules.

ITEM 32. Amend rule ~~875—1.102(17A,91)~~, introductory paragraph, as follows:

~~875—1.102(17A,91)~~ Petitions. If the petition for waiver or variance relates to a pending contested case, the petition shall be filed in the contested case proceeding. Other petitions must be ~~submitted in writing~~ mailed to Labor Commissioner, Division of Labor Services, 1000 E. East Grand Avenue, Des Moines, Iowa 50319. In either case, the petition shall include the following information where applicable:

ITEM 33. Amend ~~875—Chapter 1~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A, 22 and 91, ~~2000 Iowa Acts, House File 2206,~~ and Executive Order Number Eleven.

ITEM 34. Rescind and reserve ~~875—Chapter 2~~.

ITEM 35. Amend paragraph **4.3(2)“a”** as follows:

a. Completing the incident report form available at www.iowaosha.gov and faxing the completed form to ~~(515)242-5076~~ (515)725-2024 or sending the completed form to osha@iwd.iowa.gov;

ITEM 36. Amend paragraph **4.3(2)“c”** as follows:

c. Visiting ~~1000 E. Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa.

ITEM 37. Amend rule 875—8.1(88), introductory paragraph, as follows:

875—8.1(88) Purpose and scope. This chapter contains procedures for the division of labor services, bureau of consultation and education, to provide consultation services to private and public employers. Employers seeking information regarding consultative services should visit <http://www.iowaworkforce.org/labor/iosh/consultation/index.htm> www.iowaosha.gov or telephone (515)281-7629.

ITEM 38. Amend rule **875—32.2(92)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapter 92 ~~as amended by 2015 Iowa Acts, House File 397.~~

ITEM 39. Amend paragraph **32.11(1)“b”** as follows:

b. Each day that a child works without a permit, works ~~on a prohibited day~~ too many hours, works at a prohibited time, or works in a prohibited occupation shall be a separate violation.

ITEM 40. Rescind and reserve paragraph **32.11(3)“b.”**

ITEM 41. Amend subrule 32.11(4), introductory paragraph, as follows:

32.11(4) *Time Hours violations.* If a child is killed while working ~~on a prohibited day or at a prohibited time or for excessive hours~~, the civil penalty shall be \$10,000 for each instance. ~~Otherwise For other time or hour violations~~, the penalties set forth in this subrule shall be applied.

ITEM 42. Rescind paragraph **32.11(4)“b”** and adopt the following new paragraph in lieu thereof:

b. For any time or hours violation not described elsewhere in this subrule, the following civil penalty schedule shall apply:

| <u>Instance</u> | <u>Penalty</u> |
|--------------------------|------------------------|
| First | \$100 civil penalty |
| Second | \$250 civil penalty |
| Third | \$500 civil penalty |
| Fourth | \$1,000 civil penalty |
| Fifth | \$2,500 civil penalty |
| Sixth | \$5,000 civil penalty |
| Seventh | \$7,500 civil penalty |
| Each additional instance | \$10,000 civil penalty |

ITEM 43. Amend subrule 35.3(1) as follows:

35.3(1) *Wage claim form.* A wage claim form ~~shall be available upon request~~ is available at www.iowawage.gov. An aggrieved employee shall supply such information as required by the commissioner to commence the investigation of a claim. The claimant shall certify by signature that such information is true to the best of the claimant’s knowledge and belief. A claim for wages ~~shall may be made by submitting a complete wage claim form to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319~~ sent to the division office by mail, facsimile, or email.

ITEM 44. Amend paragraph **38.8(2)“c”** as follows:

c. All contracts and fee schedules must clearly state that the agency is licensed by the labor commissioner and that inquiries may be ~~submitted~~ made via mail to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319, or by telephone (515)242-5870.

ITEM 45. Rescind the definition of “Asbestos project” in rule **875—155.1(88B)**.

ITEM 46. Amend subrule 155.2(1) as follows:

155.2(1) Application. To apply for or to renew a permit, a business entity shall complete and submit a completed application, Form 309-6504, to the form provided by the division. All requested applicable information and attachments must be provided. A \$500 nonrefundable application fee shall accompany each permit application.

ITEM 47. Amend rule 875—155.4(88B), introductory paragraph, as follows:

875—155.4(88B) Asbestos project records. ~~The~~ In addition to meeting requirements set forth in the occupational safety and health standards of 29 CFR 1910.1020, the permittee shall keep a record of each asbestos project it performs and shall make the record available to the division at any reasonable time. Records required by this rule shall be kept for at least six years. The records shall include:

ITEM 48. Rescind and reserve subrules **155.4(7)** to **155.4(9)**.

ITEM 49. Amend paragraph **155.5(3)“d”** as follows:

d. The ~~anticipated~~ scheduled dates of the project’s start and end.

ITEM 50. Amend subrule 155.6(1) as follows:

155.6(1) Forms Application form. ~~Iowa Form 309-2068 must be used for all new and renewal asbestos license applications. The second page of the form is the respirator fit test and the third page is a physician’s certification. Forms from other states may not be substituted for the Iowa form or any part thereof. Except as noted in this subrule, the applicant must complete and submit the entire form provided by the division with the necessary attachments. Respirator fit tests and medical examinations must have occurred within the past 12 months. Only worker and contractor/supervisor license applicants must submit the respirator fit test and physician’s certification forms. Photocopies of the forms shall not be accepted.~~

ITEM 51. Amend subrule 156.4(1) as follows:

156.4(1) Complaints. Any person with information regarding a violation of the Act may submit a written complaint to the commissioner. Any complaint must provide the information required pursuant to subrule 156.4(2) or as much of such information as is reasonably practicable under the circumstances. The completed written complaint form shall be ~~submitted~~ mailed to the commissioner at Labor Services Division, 1000 East Grand Avenue, Des Moines, Iowa 50319.